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30 SAP AG, SAP AMERICA, INC., and  
31 TOMORROWNOW, INC.

32 UNITED STATES DISTRICT COURT  
33 NORTHERN DISTRICT OF CALIFORNIA  
34 OAKLAND DIVISION

35 ORACLE USA, INC., et al., 36 Plaintiffs, 37 v. 38 SAP AG, et al. 39 Defendants.	40 Case No. 07-CV-1658 PJH (EDL) 41 <b>DEFENDANT TOMORROWNOW, INC.'S 42 SIXTH AMENDED AND SUPPLEMENTAL 43 RESPONSES TO PLAINTIFF ORACLE 44 CORP.'S THIRD SET OF 45 INTERROGATORIES AND SAP AMERICA, 46 INC.'S AND SAP AG'S FIFTH AMENDED 47 AND SUPPLEMENTAL RESPONSES TO 48 PLAINTIFF ORACLE CORP.'S SECOND SET 49 OF INTERROGATORIES</b>
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**INTERROGATORY NO. 4:**

Describe all efforts undertaken by the SAP AG executive board of directors to ensure that SAP TN did not violate any Oracle copyright (or other intellectual property right) in the provision of its services, the time frame for each described effort, and the Identity, roles, and responsibilities of all involved individuals.

**RESPONSE TO INTERROGATORY NO. 4:**

**ALL ANSWERS TO THIS REQUEST ARE DESIGNATED AS CONFIDENTIAL INFORMATION**

***TomorrowNow, SAP America, and SAP AG Answer***

1           In addition to Defendants' General Objections and Responses, Defendants object that the  
 2 request is overly broad and unduly burdensome. In addition, Defendants object to the extent the  
 3 Interrogatory purports to require Defendants to create a compilation, abstract, or summary from  
 4 business records that Defendants have already produced or will produce. Defendants also object  
 5 that the information being requested is unreasonably cumulative or duplicative of discovery  
 6 already being conducted by Plaintiffs. Defendants further object that the information being  
 7 sought can be obtained by a more convenient source, namely, depositions that Plaintiffs have  
 8 already noticed. Defendants further object that this is an improper contention Interrogatory as it  
 9 seeks Defendants to define what actions constitute legally impermissible conduct. Defendants  
 10 also object to the extent this Interrogatory calls for information that is inadmissible under Federal  
 11 Rule of Evidence 407. Lastly, Defendants object to the extent that this Interrogatory calls for  
 12 information protected by the attorney-client or work product privileges. Defendants will not  
 13 provide such privileged information. Subject to and without waiving their Objections, Defendants  
 14 respond as follows:

15           The fact that Defendants are providing an answer to this Interrogatory is not intended to  
 16 be, and should not be read as, an admission that TomorrowNow was in fact in violation of any  
 17 copyright or other intellectual property right.

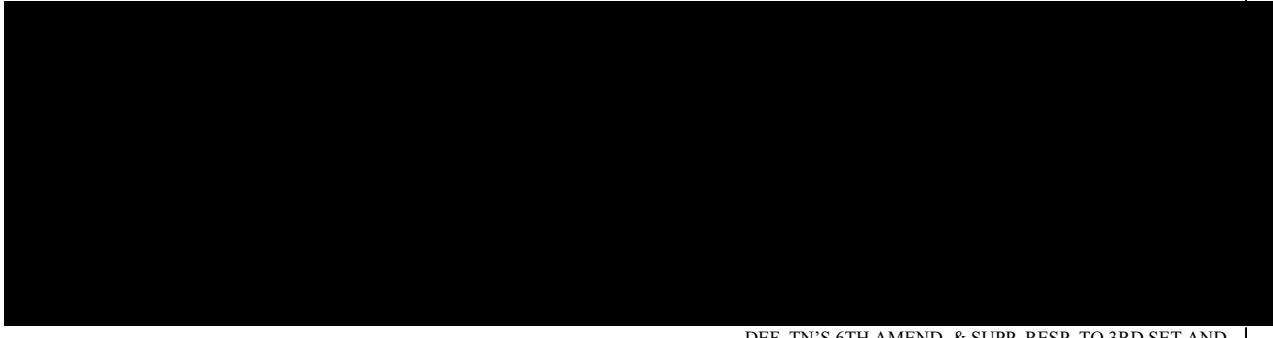
18           SAP AG's executive board issued the directives listed below and TomorrowNow  
 19 management was responsible for the implementation of these directives.

20           1.        In early 2005, the SAP AG executive board issued rules governing the interaction  
 21 between SAP and TomorrowNow. These rules were known as the Rules of Engagement. The  
 22 stated purpose of these rules was to "ensure that both TN and SAP continue[d] to respect the  
 23 intellectual property rights in PeopleSoft (PS) and JD Edwards (JDE) software." See Bates Nos.  
 24 TN-OR00000016 – 20. The Rules of Engagement were first circulated to employees at both SAP  
 25 and TomorrowNow on March 9, 2005. An update version of the Rules of Engagement were  
 26 further circulated on March 15, 2006. See Bates Nos. TN-OR00000016 – 20, TN-OR00000021 –  
 27 24.  
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1       2. By March 2005, the SAP AG executive board issued a directive to  
 2 TomorrowNow's management to remove customer local environments from TomorrowNow  
 3 computers. On behalf of SAP AG's executive board, Thomas Ziemen instructed TomorrowNow  
 4 CEO Andrew Nelson to evaluate and implement removal of customer Local Environments from  
 5 TomorrowNow computers. In response to this direction, TomorrowNow initiated a project to  
 6 investigate removal of customer Local Environments from TomorrowNow computers. Some  
 7 have referred to this project as "Project Blue." Periodically, Andrew Nelson would communicate  
 8 the status of the project to Thomas Ziemen. The following current and former TomorrowNow  
 9 employees were involved in the evaluation and execution of the project: Julio Guzman, Catherine  
 10 Hyde, Beth Lester, George Lester, Andrew Nelson, Greg Nelson, Shelley Nelson, Owen O'Neil,  
 11 Josh Testone, and Eskander Yavar.

12      3. In July 2007, the SAP AG executive board appointed SAP employee Mark White  
 13 as the new chairman of TomorrowNow to manage TomorrowNow's operations and compliance  
 14 programs.

15      4. In August 2007, the SAP AG executive board ordered that all customer local  
 16 environments still remaining on TomorrowNow computers must be moved to customer  
 17 computers. Pursuant to this directive, all customer local environments on TomorrowNow  
 18 computers were shut down permanently on April 30, 2008. The SAP executives involved in  
 19 overseeing the implementation of this directive were Martin Breuer and Mark White. The  
 20 TomorrowNow employees involved in implementing this directive include: John Baugh, Mark  
 21 Kreutz, Shelley Nelson, and numerous other lower-level TomorrowNow employees.

22      Identifying information for the above-named SAP and TomorrowNow employees is  
 23 provided below:  
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**AMENDED RESPONSE TO INTERROGATORY NO. 4:**

Defendants amend subparagraph 2 of their response to this Interrogatory as follows:

2. By March 2005, the SAP AG executive board issued a directive to

TomorrowNow's management to remove customer local environments from TomorrowNow computers. CEO Andrew Nelson was instructed to evaluate and implement removal of customer Local Environments from TomorrowNow computers. In response to this direction, TomorrowNow initiated a project to investigate removal of customer Local Environments from TomorrowNow computers. Some have referred to this project as "Project Blue." On certain occasions, Andrew Nelson would communicate the status of the project to Thomas Ziemen. The following current and former TomorrowNow employees were involved in the evaluation and

1 execution of the project: Julio Guzman, Catherine Hyde, Beth Lester, George Lester, Andrew  
 2 Nelson, Greg Nelson, Shelley Nelson, Owen O'Neil, Josh Testone, and Eskander Yavar.

3 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 4:**

4 Defendants amend subparagraph 2 of their response to this interrogatory as follows:

5 2. In January 2005, the SAP AG executive board issued a directive to  
 6 TomorrowNow's management to remove customer local environments from TomorrowNow  
 7 computers. By March 2005, on behalf of the SAP AG executive board, Chris Faye  
 8 communicated the Executive Board's instruction to CEO Andrew Nelson to evaluate and  
 9 implement removal of customer Local Environments from TomorrowNow computers. In  
 10 response to this direction, TomorrowNow initiated a project to investigate removal of customer  
 11 Local Environments from TomorrowNow computers. Some have referred to this project as  
 12 "Project Blue." On certain occasions, Andrew Nelson would communicate the status of the  
 13 project to Chris Faye and on limited occasions to Thomas Ziemen. The following former  
 14 TomorrowNow employees were involved in the evaluation and execution of the project: Julio  
 15 Guzman, Catherine Hyde, Beth Lester, George Lester, Andrew Nelson, Greg Nelson, Shelley  
 16 Nelson, Owen O'Neil, Josh Testone, and Eskander Yavar.

17 Extensive Rule 30(b)(6) deposition testimony has been taken on "Project Blue" and the  
 18 efforts of SAP AG's executive board of directors to ensure that TomorrowNow did not violate  
 19 Plaintiffs' intellectual property rights. For example, Plaintiffs have sought corporate  
 20 representative testimony on "[t]he investigation and action that resulted in Your executive board  
 21 directive[] . . . , including without limitation: a. all related discussions, analyses, Documents or  
 22 Communications leading up to the decisions to issue the referenced March 2005 [directive] . . . ;  
 23 b. the actual content of the directive[] . . . ; c. the names of the individual(s) who conveyed the  
 24 directive[], the date [] issued, the method of conveyance, and the recipient(s) of [the] directive; d.  
 25 the method and frequency discussed, envisioned and/or expressed by You for how progress of the  
 26 Board directive['s] implementation would be conveyed from SAP TN to You . . . ; e. the  
 27 timeframe and/or deadlines discussed, envisioned, and/or expressed by You for the completion of  
 28 the Board directive[] at the time [it] was issued, or at any other time during the implementation

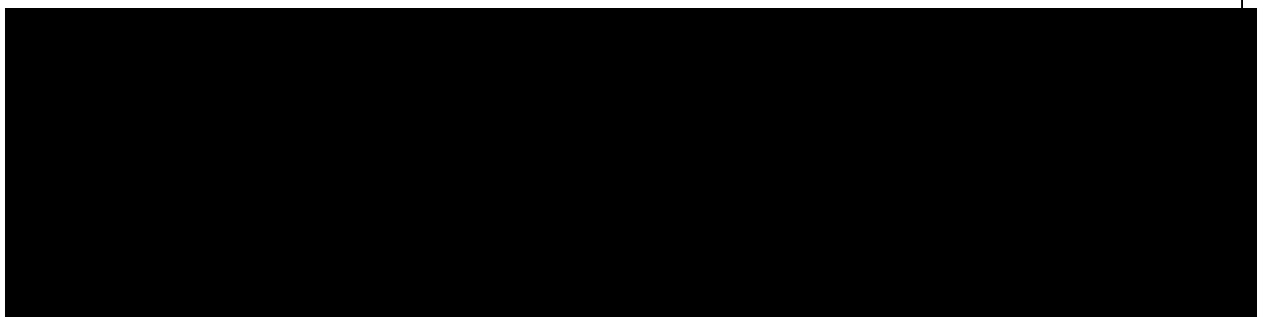
1 stages; . . . [and] h. the name(s) of Your Board member(s), executive(s) or other personnel who  
 2 were responsible for any aspect of the Board directive[], including their approval, issuance and  
 3 implementation, and his/her knowledge of or involvement in any of the above activities. . . ." *See*  
 4 February 25, 2009 Amended Notice of Deposition of SAP AG and SAP America Pursuant to Fed.  
 5 R. Civ. P. 30(b)(6) re Project Blue. *See also* February 25, 2009 Amended Notice of Deposition of  
 6 TomorrowNow, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6) re Project Blue. Multiple days of  
 7 deposition testimony were taken in response to these noticed topics. *See* March 18, 2009  
 8 Deposition of Chris Faye Pursuant to Rule 30(b)(6); February 5, 2009 Deposition of Mark White  
 9 Pursuant to Rule 30(b)(6). *See also* February 19, 2009 Deposition of Tim Crean. Pursuant to  
 10 Rule 33(d), TomorrowNow incorporates this testimony by reference and relies on this testimony  
 11 to further respond to this interrogatory.

12 Defendants amend subparagraph 4 of their response to this interrogatory as follows:

13       4.     In August 2007, the SAP AG executive board reiterated its original directive, and  
 14 specifically ordered that all customer local environments still remaining on TomorrowNow  
 15 computers must be moved to customer computers. Pursuant to this directive, all customer local  
 16 environments on TomorrowNow computers were shut down permanently on April 30, 2008. The  
 17 SAP executives involved in overseeing the implementation of this directive were Martin Breuer  
 18 and Mark White. The TomorrowNow employees involved in implementing this directive  
 19 include: Julio Guzman, John Baugh, Mark Kreutz, Shelley Nelson, John Tanner, Kathy Williams,  
 20 and numerous other lower-level TomorrowNow employees.

21       Identifying information for the above-named SAP and TomorrowNow employees is  
 22 provided below:

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14 Paragraphs 1 and 3 from the original response remain unchanged, are fully incorporated  
15 herein and apply equally to TomorrowNow's support of Siebel products.

16 **ORACLE DATABASE SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**  
17 **ALL RESPONSES TO THIS REQUEST ARE DESIGNATED AS CONFIDENTIAL**  
18 **INFORMATION**

19 ***TomorrowNow, SAP America, and SAP AG Supplemental Answer***

20 Subject to and without waiving their objections, Defendants respond that the efforts  
21 undertaken by the SAP AG executive board of directors to ensure that TN did not violate any  
22 Oracle intellectual property rights in the provision of its services with respect to Oracle database  
23 products are described in the original response and all supplemental or amended responses to this  
24 Interrogatory above.

25 Specifically, and as set forth more fully above, the Rules of Engagement governed the  
26 interaction between SAP and TomorrowNow. The stated purpose of these Rules of Engagement  
27 was to "ensure that both TN and SAP continue[d] to respect the intellectual property rights in  
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1 PeopleSoft (PS) and JD Edwards (JDE) software," which included intellectual property rights in  
 2 the underlying Oracle database products. *See* Bates Nos. TN-OR00000016 – 20.

3 Further, the SAP AG executive board directive to remove all copies of local environments  
 4 from TomorrowNow systems also logically applied to TomorrowNow's use of Oracle database  
 5 products. As more fully described above, by March 2005, on behalf of the SAP AG executive  
 6 board, Chris Faye communicated the Executive Board's instruction to CEO Andrew Nelson to  
 7 evaluate and implement removal of customer Local Environments from TomorrowNow  
 8 computers. The Executive Board's directive logically applied not only to TomorrowNow's  
 9 support of PeopleSoft, JDE, and later Siebel products, but also to Oracle database related  
 10 components. *See* October 20, 2009 Deposition of Werner Brandt, at 89:24-90:24 (stating that the  
 11 2005 directive should have applied to the application software on TomorrowNow's servers as  
 12 well as the Oracle database software) (rough transcript).

13 In June 2007, the SAP AG executive board reiterated its original directive, and  
 14 specifically ordered that all customer local environments still remaining on TomorrowNow  
 15 computers must be moved to customer computers. The reiteration of the directive also included  
 16 TomorrowNow's use of Oracle database products. *See id.* at 96:20-97:4 (stating that the  
 17 reissuance of the 2005 directive in 2007 should also have applied to TomorrowNow's copies of  
 18 Oracle database software) (rough transcript). Pursuant to this directive, all customer local  
 19 environments on TomorrowNow computers, including any underlying Oracle database products,  
 20 were shut down permanently on April 30, 2008.

21 Pursuant to Rule 33(d), TomorrowNow incorporates the above-cited testimony by  
 22 reference and relies on this testimony to further respond to this interrogatory.

23 **INTERROGATORY NO. 5:**

24 Describe any effort any Defendant has made to determine whether SAP TN had authority  
 25 or license to possess, Use, or transfer any Local Environment or Software and Support Material  
 26 on its computer system as of March 22, 2007.

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1 program. Defendants will timely supplement this response in accordance the Courts guidance on  
2 the 61 Customers and the parties meet and confer discussions.

3 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

4 **ALL ANSWERS TO THIS REQUEST ARE DESIGNATED AS CONFIDENTIAL  
5 INFORMATION**

6 ***TomorrowNow, SAP America, and SAP AG Answer***

7 Defendants further respond that they are not aware of any instance in which the  
8 availability of TomorrowNow's services was a material contributing fact to any sales of licenses  
9 of SAP software as part of the Safe Passage program.

10

11 Dated: December 4, 2009.

JONES DAY

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By: /s/ Jason McDonell  
Jason McDonell

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Counsel for Defendants  
SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.

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**PROOF OF SERVICE**

I, Laurie Paige Burns, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On December 4, 2009, I served a copy of the attached document(s):

**DEFENDANT TOMORROWNOW, INC.'S SIXTH AMENDED AND  
SUPPLEMENTAL RESPONSES TO PLAINTIFF ORACLE CORP.'S  
THIRD SET OF INTERROGATORIES AND SAP AMERICA, INC.'S,  
AND SAP AG'S FIFTH AMENDED AND SUPPLEMENTAL RESPONSES  
TO PLAINTIFF ORACLE CORP.'S SECOND SET OF  
INTERROGATORIES**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope and causing such envelope to be hand delivered to the office of the addressee on the date specified above.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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Executed on December 4, 2009, at San Francisco, California.

By: Laurie Paige Burns  
LAURIE PAIGE BURNS